

FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

In re:

TIPHANY BUTLER,

Debtor.

Bk. No. LA 01-18851-BR

WESTSIDE APARTMENTS, LLC,

Movant,

v.

TIPHANY BUTLER,

Respondent.

OPINION

BARRY RUSSELL, Bankruptcy Judge.

I. INTRODUCTION

Tiphany Butler filed a chapter 7 petition seeking, inter alia, protection under the automatic stay provisions of the Bankruptcy Code. Specifically, the debtor sought to stay the eviction action instituted by landlord Westside Apartments, LLC. Westside subsequently brought a motion for relief from the automatic stay under § 362,¹ relying in part upon California Code of Civil Procedure § 715.050, which permits execution of a valid writ of possession in an unlawful detainer action notwithstanding a tenant's filing of a post-judgment bankruptcy

¹ Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330.

1 petition. By separate order, I grant Westside's motion for
2 relief from the automatic stay. For the reasons set forth
3 below, I hold that under California law, Butler possessed an
4 equitable interest in the residential rental property at the
5 time of her bankruptcy filing, which was protected by the
6 automatic stay. I also hold that California Code of Civil
7 Procedure § 715.050 is preempted by federal bankruptcy law, and
8 is therefore unconstitutional.

9 II. FACTS

10 The facts in this case are undisputed. Debtor Tiphany
11 Butler filed her voluntary chapter 7 petition on March 27, 2001.
12 Among the assets scheduled in Butler's petition was an interest
13 in certain residential real property, an apartment unit, she
14 rented from movant Westside Apartments, LLC on a month-to-month
15 basis.

16 Prior to filing, Butler had been in default on the monthly
17 rental payments since January 1, 2001. Westside served Butler
18 with the requisite 3-Day Notice To Pay Rent Or Move Out on
19 January 9, 2001. Butler did not pay the rent due and did not
20 vacate the premises.

21 On January 22, 2001, Westside filed a complaint against
22 Butler in state court for unlawful detainer. A trial was held
23 and judgment was entered against Butler on March 14, 2001,
24 whereby Westside was awarded possession of the subject property.
25 A valid writ of possession was executed on March 19, 2001, which
26 authorized the Los Angeles County Sheriff's Department to

enforce Westside's judgment. On March 27, 2001, the same day that Butler filed her petition, the Sheriff's Department served Butler with a Notice To Vacate the premises by March 31, 2001. The Sheriff's Department also issued a Notice Of Enforcement Of Eviction which provides in pertinent part:

6. You may instruct the Sheriff to evict the tenant notwithstanding any subsequently filed bankruptcy petition.

The day after filing her petition, Butler advised the Sheriff's Department in person that she had filed bankruptcy, and that any eviction proceedings against her should be stayed. Butler was informed that she would be evicted notwithstanding her pending bankruptcy.

Butler immediately filed an emergency motion in this Court for a stay of the Sheriff Department's actions to evict Butler from her residence pending a hearing on the merits. On March 29, 2001, this Court issued an order staying the eviction proceedings pending further order of the Court. Butler then notified the Sheriff's Department by phone of the stay.

On April 10, 2001, Westside filed a motion for relief from the automatic stay under § 362, requesting that it be heard on shortened notice. The motion was heard on shortened notice on April 24, 2001. Butler filed no opposition to Westside's motion and did not appear at the hearing. The motion was granted.

III. ISSUES

A. Whether mere possession of real property, without a legal right to possession, creates an equitable interest protected

1 under California law, thus qualifying such interest as property
2 of the bankruptcy estate pursuant to § 541(a)(1), which is
3 protected by the automatic stay.

4 B. Whether California Code of Civil Procedure § 715.050 is
5 preempted by federal bankruptcy law and is therefore
6 unconstitutional.

7 IV. DISCUSSION

8 A. Applicability of the Automatic Stay

9 Section 362(a) provides that upon the filing of a
10 bankruptcy petition, a stay is automatically imposed on, inter
11 alia, (1) the commencement or continuation of an action against
12 the debtor commenced before the filing of the bankruptcy case;
13 (2) the enforcement of a judgment against the debtor or property
14 of the estate obtained before the commencement of the bankruptcy
15 case; and (3) any act to obtain possession of property of the
16 estate, to obtain property from the estate, or to exercise
17 control over property of the estate.²

18
19 ² Section 362(a) provides in pertinent part:

20 (a) Except as provided in subsection (d)
21 of this section, a petition filed under
22 section 301, 302, or 303 of this title, . . .
operates as a stay, applicable to all
entities, of-

23 (1) the commencement or
24 continuation, including the
25 issuance or employment of process,
26 of a judicial, administrative, or
other action or proceeding against
the debtor that was or could have

(continued...)

1 "Property of the estate" is defined in § 541 and includes,
2 inter alia, "all legal or equitable interests of the debtor in
3 property as of the commencement of the case."³

4 Therefore, if the debtor had a legal or equitable interest
5 in the residence at the time of her bankruptcy filing then
6 § 362(a)(3) would stay the landlord's unlawful detainer
7 proceeding.

8
9

²(...continued)

10 been commenced before the
11 commencement of the case under this
12 title, or to recover a claim
13 against the debtor that arose
14 before the commencement of the case
15 under this title;

16 (2) the enforcement, against the
17 debtor or against property of the
18 estate, of a judgment obtained
19 before the commencement of the case
20 under this title;

21 (3) any act to obtain possession
22 of property of the estate or of
23 property from the estate or to
24 exercise control over property of
25 the estate;

26 ³ Section 541(a)(1) provides:

(a) The commencement of a case under
section 301, 302, or 303 of this title
creates an estate. Such estate is comprised
of all of the following property, wherever
located and by whomever held:

(1) Except as provided in subsections
(b) and (c)(2) of this section, all legal or
equitable interests of the debtor in property
as of the commencement of the case.

1 **B. Property Interest Under California Law**

2 The existence and scope of a debtor's interest in property
3 is determined by applying state law. In re Di Giorgio, 200 B.R.
4 664, 670 (C.D. Cal. 1996) (citing Butner v. United States, 440
5 U.S. 48 (1979)).

6 **1. Legal Interest in the Property**

7 Under California law, Butler had no legal right to possess
8 the premises at the time she filed her chapter 7 petition. "A
9 tenant is 'guilty of unlawful detainer' when he or she continues
10 in possession without the landlord's permission after default in
11 the payment of rent and three days' notice has been served upon
12 the tenant by the landlord." Di Giorgio, 200 B.R. at 670
13 (quoting CAL.CIV.PROC.CODE § 1161(2)). It is indisputable that
14 Westside followed the required procedures, which terminated
15 Butler's tenancy of the apartment prior to her bankruptcy
16 filing. Thus, Westside's actions extinguished Butler's legal
17 right to possess the property.

18 Nevertheless, if Butler's mere possession of the premises
19 constituted an equitable interest, it would still be protected
20 by § 362(a)(3).

21 **2. Equitable Interest in the Property**

22 California has long recognized possession of real property
23 as a protected interest as evidenced by CAL.CIV.CODE § 1006,
24 which the California legislature originally enacted in 1872:

25 § 1006. Title conferred by occupancy.

26 Occupancy for any period confers a title
 sufficient against all except the state and

1 those who have title by prescription,
2 accession, transfer, will, or succession;
3 but the title conferred by occupancy is not
4 a sufficient interest in real property to
5 enable the occupant or the occupant's
6 privies to commence or maintain an action to
7 quiet title, unless the occupancy has
8 ripened into title by prescription.

9 California case law early recognized "[i]n this state, as
10 elsewhere, the mere possession of real estate is constantly
11 treated as property, which may be purchased and sold, and for
12 the recovery of which an action may be maintained against one
13 having no better title." King v. Gotz, 70 Cal. 236, 240 (1886).
14 See also Bond v. Aickley, 168 Cal. 161, 163 (1914) (citing the
15 same language as CAL.CIV.CODE § 1006).

16 Therefore, it is clear that under California law, Butler
17 had an equitable interest in the premises, which was protected
18 under § 362(a)(3). The United States District Court reached
19 this same conclusion in In re Di Giorgio, 200 B.R. 664, 670
20 (C.D. Cal. 1996).

21 Di Giorgio involved facts substantially similar to those
22 present here in that the landlord attempted to execute a valid
23 writ of possession resulting from an unlawful detainer action
24 against the tenants. The tenants, while still in possession of
25 the subject residential property, filed a post-judgment
26 voluntary chapter 7 petition. Relying on the recently-enacted
27 CAL.CIV.PROC.CODE § 715.050 as its authority for disregarding §
28 362, the Sheriff's Department expressed its intent to enforce
29 the writ of possession without first requiring the landlord to
30 obtain relief from the automatic stay. The Di Giorgios brought

1 an action against the landlord and the Sheriff's Department to
2 enjoin enforcement of \$ 715.050, which the bankruptcy court
3 granted.

4 The District Court affirmed the bankruptcy court's ruling
5 and held, inter alia, that the Di Giorgios' equitable possessory
6 interest in the rented residential property was property of the
7 estate under § 541(a)(1), which was protected by the automatic
8 stay.⁴

9 After discussing CAL.Civ.CODE § 1006 and other relevant
10 California case law, the District Court expressed its view, with
11 which I agree, that subject to state law, Congress intended the
12 bankruptcy estate to include possessory interests in residential
13 real property:

14 Section 541(a) provides that, with a
15 few express exceptions, property of the
16 bankruptcy estate comprises "all legal or
17 equitable interests of the debtor in
18 property as of the commencement of the
19 case." 11 U.S.C. § 541(a)(1). The
20 legislative history indicates that Congress
21 intended the estate to include possessory
22 interests. See S.Rep. No. 989, 95th Cong.,
23 2d Sess. 82 (1978), reprinted in 1978
24 U.S.C.C.A.N. 5787, 5868 ("debtor's interest
25 in property includes 'title' to property
26 which is an interest, just as are possessory
interests, or leasehold interests").

The Court does not believe that
Congress intended to exclude mere possession

⁴ On appeal, the Ninth Circuit held that the bankruptcy
court should have dismissed the Di Giorgios' action as moot
because they had surrendered possession prior to the hearing in
the bankruptcy court. In re Di Giorgio, 134 F.3d 971 (9th Cir.
1998). Nevertheless, the well-reasoned District Court opinion is
very persuasive.

1 of real property, even possession without a
2 legal basis, from the "property of the
3 estate." Congress expressly created a
number of exceptions to the broad language
of § 541(a)(1), including the provision that

4 [p]roperty of the estate does not
5 include . . . [¶] (2) any interest
6 of the debtor as a lessee under a
7 lease of nonresidential real
8 property that has terminated at
9 the expiration of the stated term
10 of such lease before the
11 commencement of the case under
this title, and ceases to include
any interest of the debtor as a
lessee under a lease of
nonresidential real property that
has terminated at the expiration
of the stated term of such lease
during the case.

12 11 U.S.C. § 541(b)(2) (emphasis added).
13 This exception excludes any equitable
14 possessory interest from the bankruptcy
15 estate once the commercial tenant's legal
16 right to possession has expired. The
17 doctrine of expressio unius est exclusio
18 alterius is applicable here: under
19 "[e]stablished canons of statutory
20 construction, . . . 'exceptions are not to
21 be implied. An exception cannot be created
22 by construction.'" Export Group v. Reef
23 Inds., Inc., 54 F.3d 1466, 1473 (9th Cir.
24 1995) (quoting Norman J. Singer, 2A
25 Sutherland Stat. Const. § 47.11 (5th ed.
26 1992)). The expressly enumerated exceptions
"indicate that other exceptions should not
be implied." In re Gerwer, 898 F.2d 730,
732 (9th Cir. 1990) (rejecting a proposed
implied exception to § 541(a)(1)). The fact
that Congress created an exception under
§ 541(b)(2) applying expressly to the
interest in an expired lease of
nonresidential property suggests that
Congress intended possessory interests in
residential property to be included in
property of the estate.

In fact, Congress has declined to amend
bankruptcy law to exclude interests such as
the Di Giorgios' from property of the

1 bankruptcy estate. On two occasions, a bill
2 has been introduced in the U.S. House of
3 Representatives to amend § 541(b) to exempt
4 from property of the bankruptcy estate "any
5 interest of the debtor as a tenant under the
6 rental of residential real property that has
7 terminated before the commencement of the
8 case." H.R. 1156, 103d Cong., 1st Sess.
9 (1993); H.R. 2202, 102d Cong., 1st Sess.
10 (1992). This bill also would have amended
11 § 362(b) so that the automatic stay would
12 not apply to "any action to evict the debtor
13 from residential real estate occupied by the
14 debtor as a tenant under a rental
15 agreement." Id. Where Congress has
16 declined to enact such exceptions, it is not
17 the Court's province to do so. Therefore,
18 the bankruptcy court correctly held that
19 enforcement of the writ of possession
20 violated § 362(a)(3).

21 Di Giorgio, 200 B.R. at 672-73 (footnote omitted) (emphasis in
22 original).

23 Indeed, presently pending before Congress in both House
24 Bill 333 and Senate Bill 420 are provisions dealing with
25 residential unlawful detainer actions. The current version of
26 House Bill 333 is almost identical to HR 2202, referenced in Di
27 Giorgio, whereas Senate Bill 420 recognizes the existence of the
28 stay but provides for the inapplicability of the stay to
29 unlawful detainer proceedings involving residential real
30 property if certain conditions are met.

31 The proposed legislation makes it abundantly clear that
32 Congress is well aware of the problems associated with the
33 operation of the automatic stay as it pertains to residential
34 unlawful detainer actions. Despite the legislative proposals,
35 Congress has yet to carve out an exception to the automatic stay
36 for residential landlords seeking to enforce a valid writ of

1 possession obtained in an unlawful detainer action. Perhaps
2 Congress has not seen fit to allow a landlord to evict a
3 residential debtor notwithstanding the filing of a post-judgment
4 bankruptcy petition because Congress does not wish to be seen as
5 throwing residential debtors out on the street. It may also
6 desire to protect the sanctity of a person's home above all
7 other interests, at least until a creditor can successfully
8 obtain relief from the automatic stay in the bankruptcy court.

9 It is not the province of this Court or any other court to
10 engage in judicial legislation as a means to solve this social
11 and economic dilemma. No state legislature is empowered to
12 legislate around the automatic stay provisions of § 362(a)
13 because of preemption by federal bankruptcy law, as discussed in
14 section C, infra.

15 Citing In re Smith, 105 B.R. 50 (Bankr. C.D. Cal. 1989),
16 Westside argues that Butler had no equitable interest in the
17 premises at the time she filed her bankruptcy petition. Smith
18 is factually very similar to the matter before this Court. In
19 Smith, the landlord had obtained a prepetition unlawful detainer
20 judgment against a chapter 7 debtor. The landlord moved for
21 relief from the automatic stay in order to remove the debtor
22 from her residence. The debtor neither filed an opposition to
23 the motion nor appeared at the hearing on the motion.

24 Rather than merely granting the motion, the Smith court,
25 apparently without any urging from the landlord, held that
26 § 362(a) did not stay a landlord from enforcing a prepetition

1 unlawful detainer judgment to regain possession of the debtor's
2 residence and thus, no order granting relief from the automatic
3 stay was required:

4 Based upon my conclusion that the Stay
5 does not enjoin Movant from enforcing the
6 Judgment, no order granting relief from stay
7 is required.

8 Nevertheless, in the interests of
9 justice, and to allow Movant to enforce the
10 Judgment with no further delay, I hereby
11 authorize Movant, to the extent that such
12 authority is required, to enforce the
13 Judgment to regain possession of the
14 Apartment from Debtor.

15 Id. at 56.⁵

16 Smith relies chiefly upon In re Windmill Farms, Inc., 841
17 F.2d 1467 (1988), for its conclusion that the debtor did not
18 retain a property interest once a lease has been terminated.
19 Windmill Farms held that under California law, a commercial
20 lease terminated at least by the time its lessor filed an
21 unlawful detainer action in state court where the three-day
22 notice to pay rent or quit was properly given. Thus, the court
23 held that under § 365(a), there was no lease for the chapter 7

24 ⁵ The Smith opinion devotes a great deal of its discussion
25 to the social and economic concerns surrounding the "proliferation
26 of 'unlawful detainer' case filings." According to Smith, a large
number of the chapter 7 filings in the Central District of
California are filed for the sole purpose of stopping residential
landlords from regaining possession of rented apartments without
first obtaining relief from the automatic stay. The Smith court
conceded that its opinion "may be viewed by some as judicial
legislation," but apparently concluded that such judicial
legislation was necessary because Congress knew about the concerns
surrounding unlawful detainer case filings but had not addressed
them. Id. at 55-56.

1 trustee to assume on behalf of the subsequently created
2 bankruptcy estate. The inapplicability of Windmill Farms to the
3 matter at hand is obvious. Not only did Windmill Farms not
4 involve § 362, it did not involve residential real property.

5 Windmill Farms emphasized the significance of § 365(c)(3)
6 which is inapplicable to residential real property:

7 The Bankruptcy Code permits a trustee,
8 with court approval, to "assume or reject
9 any executory contract or unexpired lease of
10 the debtor." 11 U.S.C. § 365(a). However,
11 "[t]he trustee may not assume or assign any
12 executory contract or unexpired lease of the
debtor ... if ... such lease is of
nonresidential real property and has been
terminated under applicable nonbankruptcy
law prior to the order for relief." 11
U.S.C. § 365(c)(3).

13 841 F.2d at 1469 (emphasis added). It also recognized that even
14 if the lease terminated prepetition, the trustee might seek
15 relief from forfeiture under California law⁶:

16
17 ⁶ CAL.CIV.PROC.CODE § 1179 provides:

18 § 1179. Relief against forfeiture; application;
19 petition; notice; contest; condition of grant

20 The Court may relieve a tenant against a
21 forfeiture of a lease, and restore him to his
22 former estate, in case of hardship, where
23 application for such relief is made within
24 thirty days after the forfeiture is declared
25 by the judgment of the Court, as provided in
26 section one thousand one hundred and seventy-
four. The application may be made by a
tenant or subtenant, or a mortgagee of the
term, or any person interested in the
continuance of the term. It must be made
upon petition, setting forth the facts upon
which the relief is sought, and be verified

(continued...)

1 Even though the lease may have been
2 terminated before WFI filed its Chapter 7
3 petition in bankruptcy, the trustee may be
4 entitled to relief from forfeiture of the
5 lease under California law. If so, the
trustee's assumption of the lease would be
proper. See City of Valdez v. Waterkist
Corp. (In re Waterkist Corp.), 775 F.2d
1089, 1091 (9th Cir. 1985).

6 Id. at 1471-72. This right to seek relief from forfeiture is,
7 at a minimum, an equitable interest in property entitled to
8 protection under § 362(a)(3).

9 In concluding that the debtor had no equitable interest in
10 the premises, the Smith court did not cite to any California
11 case law, nor did it address the significance of CAL.CIV.CODE
12 § 1006.

13 A single California case, Lee v. Baca, 73 Cal.App.4th 1116,
14 1118 (1999), on its surface arguably supports Westside's
15 contention that Butler had no equitable interest in the premises
16 at the time she filed her bankruptcy petition. However, Baca
17 suffers from the same fatal defects as Smith.

18 In Baca, a residential landlord obtained an unlawful
19 detainer judgment and a writ of possession. Before the Sheriff
20

21 ⁶(...continued)

22 by the applicant. Notice of the application,
23 with a copy of the petition, must be served
24 on the plaintiff in the judgment, who may
25 appear and contest the application. In no
26 case shall the application be granted except
on condition that full payment of rent due,
or full performance of conditions or
covenants stipulated, so far as the same is
practicable, be made.

1 could execute the writ, the tenants filed bankruptcy and
2 notified the Sheriff's Department of their filing. The
3 Sheriff's Department then notified the landlord that in view of
4 the filing, it would not enforce the writ of possession until
5 the landlord obtained relief from the automatic stay. Several
6 weeks later, the tenants abandoned the apartment.

7 Nevertheless, about a month later, the landlord, joined by
8 several apartment owners' associations, filed a petition for a
9 writ of mandate and a complaint for declaratory and injunctive
10 relief against the Sheriff's Department. The landlord sought a
11 declaration that the Sheriff's Department was required, pursuant
12 to CAL.CIV.PROC.CODE § 715.050, to enforce all validly issued
13 writs of possession notwithstanding a tenant's post-judgment
14 bankruptcy filing.⁷

15 The Baca court held:

16 [T]he unlawful detainer judgment
17 extinguishes the residential tenant's
18 interest in the property and that a
19 postjudgment bankruptcy filing does not
20 affect the landlord's right to regain
possession of his property--because it is
not, at that point, property of the
tenant/debtor's estate.

21 ⁷ CAL.CIV.PROC.CODE § 715.050 provides in relevant part:
22

23 Except with respect to enforcement of a
24 judgment for money, a writ of possession
25 issued pursuant to a judgment for possession
26 in an unlawful detainer action shall be
enforced pursuant to this chapter without
delay, notwithstanding receipt of notice of
the filing by the defendant of a bankruptcy
proceeding.

1 Baca, 73 Cal.App.4th at 1118.⁸

2 In addressing the issue of whether a tenant has a legal or
3 equitable interest in rented property after a judgment for
4 possession, the Baca court relegated its discussion of the issue
5 to a single paragraph:

6 The Sheriff's conflict is imagined, not
7 real. 11 U.S.C. section 541(a)(1) defines
8 "property of the estate" as used in 11
9 U.S.C. section 362(a) to include "all legal
10 or equitable interests of the debtor in
11 property as of the commencement of the
12 [bankruptcy] case." Under California law
13 (which governs the bankruptcy court's
14 determination of this issue), a tenant has
15 no legal or equitable interest in rented
16 property once a judgment for possession has
17 been entered in favor of the landlord. (In
18 re Smith (Bankr. C.D. Cal. 1989) 105 B.R.
19 50, 53-54; see also Butner v. United States
20 (1979) 440 U.S. 48, 99 S.Ct. 914, 59 L.Ed.2d
21 136; In re Farmers Markets, Inc. (9th Cir.
22 1986) 792 F.2d 1400; In re Windmill Farms,
23 Inc. (9th Cir. 1988) 841 F.2d 1467,
24 1469-1471.) It follows that, as of the June
25 25 entry of a judgment of possession in our
26 case, the tenants lost whatever legal or
equitable interest they might previously
have had in their rented apartment and that,
by the time the tenants commenced their
bankruptcy case, the Sheriff's execution of
the writ of possession would not have
affected "property of the estate" of the
debtor.

20 Id. at 1119-20.

21 As can be seen from the Baca court's discussion, the Baca
22 court did not make its own analysis of whether a tenant retained
23

24
25 ⁸ The Baca court refused to dismiss the appeal as moot.
26 "We summarily reject the Sheriff's contention that this issue is
moot. It is clearly a continuing problem for residential
landlords in this county. . . ." Id. at 1122.

1 an "equitable" interest in the leased residential property under
2 California law. Of the cases upon which it relied, only Smith
3 held that a tenant did not retain an equitable interest in the
4 leased residential property following issuance of a valid writ
5 of possession. Although the Baca court cited In re Di Giorgio,
6 it neither addressed its holding, contrary to Smith, that a
7 tenant retained an equitable interest in the premises, nor
8 addressed the impact of CAL.CIV.CODE § 1006.

9 The Baca court expressed its concern over the abuse of the
10 bankruptcy system and the financial hardships on residential
11 landlords caused by bankruptcy filings by tenants solely for
12 the purpose of staying evictions. It cited approvingly
13 statistics from Smith concerning such abuses.

14 Although I share the concerns voiced in Baca and Smith, it
15 is not the province of the California legislature, nor the state
16 or federal courts to attempt to circumvent the application of §
17 362. Rather, it is within the sole discretion of Congress to
18 modify or eliminate the application of § 362 to residential
19 unlawful detainer actions.⁹

20 Until then, this Court will not allow a landlord to enforce
21 a valid writ of possession against a tenant in possession of
22 residential property notwithstanding the tenant's bankruptcy
23 filing. Future creditors who seek to rely on Smith, Baca, or
24

25 ⁹ The California legislature could of course, by statute,
26 remove any equitable possessory interest of tenants such as
Butler. However, up to this point, it has not done so.

1 CAL.CIV.PROC.CODE § 715.050 for purposes of making an end run
2 around obtaining relief from the automatic stay run the risk of
3 liability for violating the automatic stay.

4 Based on the foregoing, I hold that Butler's possession of
5 the premises at the time of her bankruptcy filing establishes a
6 prima facie case for a finding of an equitable possessory
7 interest in the property. It follows that such equitable
8 interest constitutes a property interest of the bankruptcy
9 estate pursuant to § 541(a)(1). I decline to follow Baca and
10 Smith to the extent they fail to recognize an equitable
11 possessory interest in real property as a property interest of
12 the bankruptcy estate.

13 **C. The Constitutionality of CAL.CIV.PROC.CODE § 715.050**

14 The Supremacy Clause of the United States Constitution
15 provides:

16 This Constitution, and the Laws of the
17 United States which shall be made in
18 Pursuance thereof; and all Treaties made, or
19 which shall be made, under the Authority of
20 the United States, shall be the supreme Law
of the Land; and the Judges in every State
shall be bound thereby, any Thing in the
Constitution or Laws of any State to the
Contrary notwithstanding.

21 U.S. Const. Art. VI, cl. 2. Thus, the Supremacy Clause
22 invalidates state law to the extent it is inconsistent or
23 interferes with federal law.

24 Section 715.050 operates explicitly in contravention of the
25 automatic stay provided for in § 362(a) and is therefore
26 unconstitutional.

1 The state court in Baca based its holding that § 715.050
2 was not preempted by § 362(a) (and was therefore constitutional)
3 upon its conclusion that under California law, the tenant had
4 neither a legal nor an equitable property right in the premises.
5 As discussed supra, I hold that Butler's possessory interest
6 constituted an equitable interest which was protected by
7 § 362(a)(3). Therefore, § 715.050 is inconsistent with
8 § 362(a)(3) and is invalid. Even the Baca court would agree
9 that under circumstances where § 362(a)(3) would apply,
10 § 715.050 could not produce a contrary result.

11 In a very thoughtful analysis, the Di Giorgio court reached
12 the same conclusion that I have reached, which is that § 715.050
13 is unconstitutional on its face. 200 B.R. at 670-74. I adopt
14 the reasoning of Di Giorgio concerning the preemption of
15 CAL.CIV.PROC.CODE § 715.050.

16 **D. Sections 362(a)(1) and (2)**

17 The District Court in Di Giorgio held that in addition to
18 the applicability of § 362(a)(3), the landlord also was stayed
19 by operation of §§ 362(a)(1) and (2).

20 In view of my holding regarding the applicability of
21 § 362(a)(3), I believe that it is unnecessary to rule on the
22 possible applicability of §§ 362(a)(1) and (2).

23 **V. CONCLUSION**

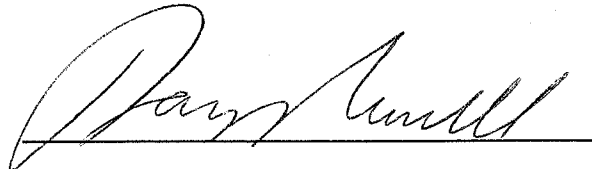
24 Under California law, a bankruptcy debtor/tenant has an
25 equitable possessory property interest which is protected by
26 § 362(a)(3) even after a landlord obtains an unlawful detainer

1 judgment. Therefore, in order to obtain relief from the
2 automatic stay, a landlord must request relief from the
3 bankruptcy court. Furthermore, CAL.CIV.PROC.CODE § 715.050 is
4 preempted by § 362 and is therefore unconstitutional.

5 In this matter, the landlord has met its burden of proof
6 and the unopposed motion for relief from the automatic stay is
7 GRANTED.¹⁰

8
9
10
11
12 1-9-02

13 DATE



14 THE HONORABLE BARRY RUSSELL
15 UNITED STATES BANKRUPTCY JUDGE
16 CENTRAL DISTRICT OF CALIFORNIA
17
18
19
20
21
22
23
24

25 _____
26 ¹⁰ An order granting the landlord's motion previously has
been entered.